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Subject: Nevada - IRS Concerns

The attached one pager outlines the IRS concerns with the Nevada issue. I just put this together quickly – so it is rough. Please feel free to add/edit as needed. I would like to have this finalized before our meeting this afternoon.

Nevada – IRS Concerns

Allowing Nevada to deviate from the designation guidelines established by IRS and CDFI for the opportunity zone program presents the following concerns:

1. Establishing reasonable criteria and applying it in an equitable and consistent manner is the baseline expectation for fair tax administration.
2. Several states have asked for a deviation, akin to the request made by Nevada, and the answer has been consistently that such a deviation is not permissible. Saying yes to Nevada creates serious potential risks to both the IRS and the opportunity zone program.
 - Risks to IRS: By giving an opportunity and benefit to Nevada that is inconsistent with the program guidelines and contrary to how IRS/CDFI treated other similar requests, IRS will be perceived as being demonstrably unfair to every other state (and the taxpayers and investors in those states). This has the potential to be perceived in the same manner as the 2013 issues that surfaced with respect to the IRS's handling of 501(c)(4) applications – in which TIGTA determined that applications were not processed in a fair and impartial manner. This will undermine the Public's trust in the IRS, as well as potentially invite scrutiny, oversight and inquiries into the overall implementation of the provisions of the Tax Cuts and Jobs Act.
 - Risk to Opportunity Zone Program: Failure to apply the designation standards equally across the board will call into question the legitimacy of the process by which the designations were made (i.e., that our administration of the standards was arbitrary); opening the door for accusations that the determination process was influenced by political considerations or bias. Any such controversy would in turn taint the Opportunity Zones and potentially chill or cloud the incentive for investors to invest in the Opportunity Zones.
 - Tax Administration is the IRS' Role: Tax administration is the domain of the IRS, whereas Tax Policy is Treasury's jurisdiction; and the reasons for this separation are well known and understood. The decision with respect to designations of tracts is a programmatic decision within the purview of tax administration. Having a decision like this made by the Treasury Secretary may call into question whether the IRS' independence with respect to tax administration is comprised.
3. CDFI also has concerns with providing Nevada the option to deviate, and we leave it to them to speak to those concerns.